

STATE OF MICHIGAN
COURT OF APPEALS

In the Matter of SMITH/CHEATHAM, Minors.

UNPUBLISHED

January 28, 2014

No. 316912

Macomb Circuit Court

Family Division

LC Nos. 2011-000316-NA

2011-000317-NA

2011-000318-NA

2011-000026-NA

Before: METER, P.J., and JANSEN and WILDER, JJ.

PER CURIAM.

Respondent appeals as of right an order terminating her parental rights to her four children pursuant to MCL 712A.19b(3)(c)(i) (conditions that led to adjudication continue to exist), (g) (failure to provide proper care or custody), and (j) (reasonable likelihood that child will be harmed if returned to parent).¹ We affirm.

First, respondent argues that the trial court clearly erred in finding that petitioner, the Department of Human Services (DHS), proved statutory grounds for termination by clear and convincing evidence. We disagree.

“We review for clear error a trial court’s finding of whether a statutory ground for termination has been proven by clear and convincing evidence.” *In re Moss*, 301 Mich App 76, 80; 836 NW2d 182 (2013). “A finding of fact is clearly erroneous if the reviewing court has a definite and firm conviction that a mistake has been committed, giving due regard to the trial court’s special opportunity to observe the witnesses.” *Id.*, quoting *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004).

“To terminate parental rights, a trial court must find that at least one of the statutory grounds for termination in MCL 712A.19b(3) has been proved by clear and convincing evidence.” *In re Ellis*, 294 Mich App 30, 32; 817 NW2d 111 (2011). “Only one statutory ground need be established by clear and convincing evidence to terminate a respondent’s

¹ The order also terminated the rights of two fathers. They do not appeal.

parental rights, even if the court erroneously found sufficient evidence under other statutory grounds.” *Id.* In this case, respondent’s parental rights were terminated pursuant to MCL 712A.19b(3)(c)(i), (g), and (j).

Respondent’s rights were terminated pursuant to MCL 712A.19b(3)(c)(i), which provides that the court may terminate parental rights if it finds:

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds either of the following:

(i) The conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child’s age.

More than 182 days elapsed between the issuance of the initial dispositional order and the order of termination. The initial dispositional order was entered on September 23, 2011. Respondent’s parental rights were terminated on June 12, 2013, which was more than 600 days later.

In concluding that MCL 712A.19b(3)(c)(i) was proven by clear and convincing evidence, the trial court noted that respondent substantially complied with the treatment plan requirements. However, respondent did not attend the second psychological evaluation recommended by Dr. Ryan, who conducted respondent’s first psychological evaluation, and she missed many drug screens, despite being unemployed and not attending school. Respondent missed screens because she slept in, did not feel like going, or did not have a telephone. The trial court concluded that respondent “lacks insight into the reasons the children were removed” and has made little progress in addressing the reasons the children came into care. D.C., the father of two of respondent’s children, failed to comply with the parent agency agreement, but respondent testified that it was not her problem and she would still allow her children to have unsupervised contact with him. The trial court also found that “[n]o amount of time or therapy will resolve the fact that [respondent] fails to see how [D.C.’s] failure to comply . . . is and should be of concern for her.”

The trial court’s findings were not clearly erroneous. One of the reasons that respondent’s children came into care related to respondent’s use of alcohol and drugs. In July 2011, respondent lived with her sister and five-year-old niece, who was allegedly abducted and later murdered. Respondent pleaded no contest to the allegation in the amended petition that she was under the influence of alcohol and drugs when her niece went missing, so she could not give any information regarding the abduction. Respondent also missed 30 out of 42 drug screens. Therefore, she could not demonstrate a substance free lifestyle as required by the treatment plan.

Respondent contends that none of her screens were negative, neither she nor her fourth child tested positive for drugs when the child was born while the treatment plan was in place, and she never appeared to be under the influence during her supervised visits with her children. However, the trial court focused on why respondent missed the screens. Respondent testified that she missed screens because she overslept, had problems with the bus, or did not have a

telephone. According to Monica Clark, a foster care caseworker employed by Bethany Christian Services, respondent said she missed because she woke up late or forgot to call. This reflects respondent's lack of accountability and motivation in doing what was necessary to have her children returned. Respondent's failure to complete a second psychological assessment also reflects this attitude. Respondent said that she did not think it was necessary to complete this requirement. Although respondent's treatment plan did not specifically state that she needed to complete a second psychological evaluation, it did require her to follow all recommendations from her mental health providers. As the trial court stated, respondent substantially complied with the requirements of her treatment plan, but it appears that she did not truly benefit from the services she received.

Another reason that the children came into care was because respondent put her children at risk of harm. The amended petition said that respondent admitted she was unable to appropriately care for her children or provide a stable living environment. The petition also alleged that respondent put her children at significant risk of harm by visiting S.B. (D.C.'s mother) several times, despite a safety plan that specified she was not to do so.² Respondent completed parenting classes and said that she learned some things, such as where not to take her children. Nonetheless, respondent said that she had no problem with leaving her children unattended with D.C. When asked if she was concerned that D.C. had not complied with his treatment plan, respondent said that it was not her problem. Most significantly, respondent testified that she thought D.C. had something to do with her niece's death, yet she was still comfortable leaving her children with him. Thus, it appears that respondent would continue to place her children at significant risk of harm if they were returned to her.

Again, the trial court's finding that termination was proper pursuant to MCL 712A.19b(3)(c)(i) does not leave us with a definite and firm conviction that a mistake has been made. *In re Moss*, 301 Mich App at 80. Because we affirm the trial court's findings in support of MCL 712A.19b(3)(c)(i), we need not address the other statutory grounds for termination, MCL 712A.19b(3)(g) and (j). But for purposes of completeness, we note that the trial court did not clearly err by concluding that DHS proved these grounds by clear and convincing evidence.

MCL 712A.19b(3)(g) provides that termination is proper when:

The parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age.

With respect to MCL 712A.19b(3)(g), the trial court noted that respondent has moved several times during the case but did have appropriate housing at the present time. However, respondent had a history of substance abuse and did not submit to several drug screens. Respondent refused

² The petition indicates that this safety plan was put in place because S.B.'s home had been recently raided. The home did not have beds, a refrigerator, or a working stove, and debris and trash were strewn all over the home. There were 8 to 10 children living there. In addition, firearms and narcotics were found in the home.

to complete a second psychological evaluation “even though it may have been helpful for her child.” The trial court found that “[t]hese are not the actions of a mother who has her children’s best interests in mind.” Respondent also denied that she was in a relationship with D.C. even though the evidence showed otherwise.

As discussed above, respondent’s failure to complete a second psychological examination and 30 of her 42 drug screens reflects her cavalier attitude about complying with the treatment plan and recognizing why her children came into care. In addition, there was evidence that respondent was still in a close relationship with D.C. Such an environment would not be proper for respondent’s children, given D.C.’s almost complete failure to comply with his treatment plan and his possible involvement in the death of respondent’s niece. Furthermore, respondent has demonstrated that she would not be able to provide proper care and custody, where she had no concerns with leaving her children with D.C., whom she thinks killed her niece.

MCL 712A.19b(3)(j) provides that termination is proper when:

There is a reasonable likelihood, based on the conduct or capacity of the child’s parent, that the child will be harmed if he or she is returned to the home of the parent.

The trial court found that while respondent complied with the treatment plan “on a superficial level,” she did not benefit from the services as evidenced by her testimony that she would leave her children with D.C. unsupervised, even though he did not comply with his treatment plan, and even though he was a suspect in the murder investigation. The trial court rejected as not credible respondent’s statements that she was no longer involved with D.C. The trial court also noted that respondent was still a person of interest in the murder case of a child.

These findings were supported by the evidence, and show that there is a reasonable likelihood that the minor children would be harmed if returned to respondent. Detective Allen Williams testified that he had submitted a warrant for respondent’s arrest to the prosecutor’s office. Respondent told her brother that D.C. was involved in the murder of her niece. Respondent’s brother was concerned that respondent would not protect her children from D.C. Additionally, respondent has not learned what environments are proper for her children. As discussed above, respondent testified that she thought D.C. was involved with her niece’s murder, but was still unconcerned with leaving her children with him.

Second, respondent contends that the trial court clearly erred in concluding that termination of her parental rights was in her children’s best interests. We disagree.

We review for clear error a trial court’s determination that termination of parental rights is in a child’s best interests. *In re Olive/Metts*, 297 Mich App 35, 40; 823 NW2d 144 (2012). If a statutory ground for termination is found by clear and convincing evidence, the petitioner must prove by a preponderance of the evidence that termination is in the child’s best interests. *In re Moss*, 301 Mich App at 90. If the trial court finds that this burden has been met, “the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made.” MCL 712A.19b(5); see also *In re Moss*, 301 Mich App at 83. When deciding if termination is in the child’s best interests, the trial court can consider “the

child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App at 41-42 (internal citations omitted).

In finding that termination of respondent's parental rights was in the children's best interests, the trial court noted that respondent's three oldest children had been in care for 22 months. Her youngest child had been in care for about six months, since her birth. All of the children are bonded with their foster parents and are doing well in their placements. In these placements, the children all have "safety, stability, and environments that encourage and strengthen the[ir] development." Although all of the children have a bond with respondent, she has not demonstrated that she can care for them consistently and provide a permanent and stable environment for them. The trial court also found that the children would "clearly be at risk if returned to any of the parents at this time."

Respondent contends that it was improper for the trial court to compare the children's bond with respondent and their bond with their foster parents. However, the trial court can properly make such a comparison when considering the children's best interests. See *In re Olive/Metts*, 297 Mich App at 41-42; *In re BZ*, 264 Mich App at 301. Respondent also argues that she has no history of neglecting her children. Yet respondent pleaded no contest to the allegations in the amended petition, which included her admission that she was unable to appropriately care for her children.

Finally, the evidence supported the trial court's conclusion that termination was in the children's best interests. Clark testified that all of the children are doing well in their placements and have bonded with their foster families. Their needs are being met. The evidence supported the court's finding that respondent and D.C. were still in a relationship. This is concerning, given respondent's belief that D.C. was involved in her niece's death and because D.C. did little to comply with his treatment plan. Despite these issues, respondent said she would not be concerned with leaving her children unsupervised with D.C. As Clark testified, this demonstrates bad judgment on respondent's part. For all of these reasons, the trial court did not clearly err in finding that termination was in the children's best interests.

Affirmed.

/s/ Patrick M. Meter

/s/ Kathleen Jansen

/s/ Kurtis T. Wilder